

REMARKS

This is responsive to a Final Office Action mailed on March 3, 2006. The Office Action rejected claims 1-3, 8-10, 15, 17-25 and 27-30 and objected to claims 4-7, 11-14, 16 and 31. With this Amendment after Final, claims 1, 9, 15, 21 and 28 have been amended. The application currently includes claims 1-25 and 27-31.

Applicants hereby respectfully request entry of this Amendment after Final as the amended claims are clearly distinguished over the prior art. Applicants did not previously present the present amended claims because Applicant believed the claims as amended the August 1, 2005 Amendment addressed the rejections in the Office Action. Only after reviewing the rejections and Response to Arguments in the March 3, 2006 Office Action did the Applicants understand the reasons for the rejections. While Applicants do not agree with the rejections, Applicants have amended the claims to address the rejections that were presented in the March 3, 2006 Office Action and avoid the need for further prosecution. Also, in the event that the rejections are maintained, the amendments would place the claims in better condition for appeal. See M.P.E.P. §§ 714.12, 714.13 and 37 C.F.R. § 1.116.

The Office Action rejected independent claim 1 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,033,363 (hereinafter the Farley patent). The Office Action alleges that the Farley patent discloses a surgical joint 21 that includes a first clamping member 52, a second clamping member 54, a shaft disposed through an attachment end of the first clamping member 52 and communicating with the second clamping member. The Office Action also alleges that the Farley patent discloses a wedge member or "actuating member" or "force providing mechanism" 60 disposed about the shaft 56 to ensure adequate constriction of

each clamping member and a cam lever or "handle" 58 attached to the actuating mechanism. In the Response to Argument section of the Office Action, the Examiner alleges that the wedge member of the Farley patent is disposed in the intervening space or "between" the first and second clamping members and has a handle 58 attached or "connected" thereto via shaft 56.

Applicants respectfully disagree that the Farley patent anticipates independent claim 1. An element of independent claim 1 includes a force providing mechanism disposed between the first and second clamping members and disposed about the shaft and having a handle attached thereto wherein an outer surface of the handle contacts the force providing mechanism. There is no disclosure in the Farley patent of a force providing mechanism having a handle fixedly attached thereto and having an outer surface of the handle contacting the force providing mechanism.

Rather, the Farley patent discloses a frusto-conical spacer positioned between the upper and lower clamping members and about the shaft. The shaft is carried through the upper and lower clamping members and attaches to a camming mechanism at an upper end. The camming mechanism 58 is not directly attached to the actuating mechanism 60 and does not have an outer surface that contacts the actuating mechanism as claimed.

While it is understood that an Examiner is to examine the scope of the claims broadly, the examination must also be conducted through the understanding of one skilled in the art. See M.P.E.P. §2111. One skilled in the art would not consider the handle 58 of the Farley patent to be attached to the frusto-conical spacer, just as one skilled in the art would not consider a left and right door of an automobile to be attached to each other or a back and front tire of an automobile to be attached to each other. The fact that components of a device are captivated does not mean that they are attached to each other.

Therefore, claim 1 is not anticipated by the Farley patent.

Reconsideration and allowance of claim 1 are respectfully requested.

The Office Action also rejected claims 2, 3, and 8 as being anticipated by the Farley patent and also objected to claims 4-7. Because claims 2-8 depend from independent claim 1, which is believed to be in allowable form, claims 2-8 are also believed to be in allowable form. Reconsideration and allowance of claims 2-8 are respectfully requested.

The Office Action also rejected independent claim 9 for the reasons stated with respect to independent claim 1. Applicants have amended independent claim 9 to include the element of an outer surface of the handle contacting the actuating mechanism where the handle fixedly connects to the actuating mechanism.

For the reasons stated with respect to the allowability of independent claim 1, independent claim 9 is also believed to be in allowable form. Reconsideration and allowance of independent claim 9 are respectfully requested.

The Office Action also rejected dependent claim 12 as being anticipated by the Farley patent and objected to dependent claims 13 and 14. Because independent claim 9 is believed to be in allowable form, dependent claims 12-14 are also believed to be in allowable form. Reconsideration and allowance of claims 12-14 are respectfully requested.

The Office Action also rejected independent claim 15 as being anticipated by the Farley patent for the reasons stated with respect to independent claim 1. In the Response to Argument section, the Office Action alleges that the wedge 60 of the Farley patent forces the legs of each of the clamping members toward each other (i.e., in opposing directions). The Examiner then provides a figure with a marked-up drawing of the clamp disclosed in the Farley patent.

Applicants respectfully disagree that independent claim 15 as amended is anticipated by the Farley patent. An element of

independent claim 15 includes that the surgical clamp comprises a clamping portion, a first leg extending from one side of the clamping portion and a second leg extending from another side of the clamping portion where the clamping portion, the first leg and the second leg are of an unitary construction.

Referring to the diagram provided in the Office Action, it is clear that the Farley patent does not anticipate unitary construction of the clamping member as defined in independent claim 15. The Office Action is alleging that the first leg is an upper leg portion of the top clamping member and the second leg is a lower leg of the bottom clamping member. The upper and lower clamping members are separate components of the clamp disclosed in the Farley patent. Therefore, the Farley patent does not anticipate independent claim 15 which defines the clamp as having a unitary construction.

For the foregoing reasons, the Farley patent does not disclose each and every element of independent claim 15, and the Farley patent does not anticipate independent claim 15. Reconsideration and allowance of independent claim 15 are respectfully requested.

The Office Action also alleges that claims 17 and 19 which depend from independent claim 15 are anticipated by the Farley patent. The Office Action also objected to dependent claim 16. Because independent claim 15 is in allowable form, claims 16, 17 and 19, which depend from independent claim 15, are also in allowable form. Reconsideration and allowance of claims 16, 17 and 19 are respectfully requested.

The Office Action also rejected independent claim 15 as being anticipated by U.S. Patent No. 5,727,899 (hereinafter the Dobrovolny patent). The Office Action alleges that the Dobrovolny patent discloses a clamping member with a clamping portion 150, first and second leg portions 160, 162, a wedge 164 disposed between the first and second leg portions and a handle 120

attached to the wedge figure 164. The Office Action makes reference to FIG. 4 and col. 4, lines 34-49.

Applicants respectfully disagree that the Dobrovolny patent discloses each and every element of independent claim 15. Specifically, independent claim 15 defines the present invention as a clamp having a wedge disposed between the first and second legs. The Dobrovolny patent does not disclose a wedge disposed between the first and second legs. Rather, the Dobrovolny patent discloses a fulcrum portion between the first and second legs that flexes when a force is applied to the clamp to position the clamping socket into a clamping position.

The fulcrum portion in the Dobrovolny patent does not force the first and second legs to move in opposing directions to place the clamp into the clamping position. Rather a camming member that is operably attached to a top end of a shaft is rotated to move the shaft. The shaft places a force on clamping member which causes the fulcrum portion to flex.

The fulcrum portion does not move, rather the fulcrum portion flexes. In contrast to a fulcrum that flexes, the wedge moves to place a force on the first and second legs.

A fulcrum portion does not anticipate a wedge positioned between an upper and a lower leg as claimed. Therefore, the Dobrovolny patent does not anticipate independent claim 15. Reconsideration and allowance of independent claim 15 are respectfully requested.

The Office Action also rejected dependent claims 17-20 as being anticipated by the Dobrovolny patent. The Office Action also objected to claim 16. Because claims 16-20 depend from independent claim 15 which is believed to be in allowable form, claims 16-20 are also in allowable form. Reconsideration and allowance of claims 16-20 are respectfully requested.

The Office Action also rejected independent claim 21 as being anticipated by the Farley patent for the reasons stated

with respect to independent claim 1. In the Response to Argument section, the Office Action alleges that lacking an explicit definition, the central axis as defined in independent claim 1 is being broadly interpreted as a lateral axis of each elongated member.

In response to the Office Action, Applicants have amended claim 21 to define the central axis for each member as extending from a first end to a second end. As previously discussed in the April 11, 2005 Amendment, the Farley patent discloses clamping bores which allow an elongated member to be inserted into one end of the clamping bore and out the other end.

The Farley patent does not disclose clamping cavities as defined in independent claim 21. Specifically, the Farley patent does not disclose clamping members having cavities that accept elongated members in a general orthogonal direction to the axis of the member.

Therefore, the Farley patent does not anticipate independent claim 21. Reconsideration and allowance of claim 21 are respectfully requested.

The Office Action also alleges that the Farley patent anticipates dependent claims 22-25 and 27. Because claims 22-25 and 27 depend from independent claim 21, which is believed to be in allowable form, it follows that dependent claims 22-25 and 27 are also in allowable form. Reconsideration and allowance of claims 24-25 and 27 are respectfully requested.

The Office Action rejected independent claim 21 as being anticipated by the Dobrovolny patent for the reasons stated with respect to independent claim 15. Further, the Office Action alleges that the Dobrovolny patent disclose that the clamping portion 150 can have a clamping member 12 rotatably attached to the clamping portion 150 where the clamping member is positioned in a clamping position by movement of the wedge about the fulcrum.

Applicants respectfully disagree that the Dobrovolny patent anticipates claim 21. Claim 21 defines a present invention as including at least two clamping members having clamping cavities with an opening for accepting an elongated member in a generally orthogonal direction to the axis of the member.

The Dobrovolny patent does not disclose two clamping members having clamping cavities as defined in the present invention. The Dobrovolny patent discloses a first clamping member 12 that includes a clamping bore with a slot that allows a clamping bore to constrict. The size of the slot does not allow the elongated member to be positioned within the clamping bore within the first clamping member in a generally orthogonal direction to the axis of the member. Rather, the elongated members are positioned into the clamping bore by positioning an end of the elongated member into an end of the clamping bore and sliding the elongated member axially thereto.

Further, while the Dobrovolny patent discloses that the upper and lower legs of the first clamping member pivot with respect to each other about the fulcrum portion, there is no disclosure that the upper and lower legs of the first clamping member pivot apart from each other. It should be noted that a camming member with a handle, for providing a mechanical advantage, is required to flex the fulcrum portion of the upper clamping member as well as the lower clamping member. It is not understood how manual force placed upon an elongated member could force the upper and lower legs sufficiently apart to allow an elongated member having a diameter similar to the diameter of the clamping bore into the clamping bore.

The Dobrovolny patent does not anticipate independent claim 21 because it does not disclose each and every element of claim 21 for the reasons provided. Reconsideration and allowance of independent claim 21 are respectfully requested.

Claims 22-25 and 27 depend from independent claim 21 and

were alleged to be anticipated by the Dobrovolny patent. Because the Dobrovolny patent does not anticipate independent claim 21, it follows that dependent claims 22-25 and 27 are also not anticipated by the Dobrovolny patent. Reconsideration and allowance of dependent claims 22-25 and 27 are respectfully requested.

The Office Action also rejected independent claim 28 under 35 U.S.C. §102(e) as being anticipated by U.S. Application Publication No. 2003/0191370 (hereinafter the Phillips application). The Office Action alleges that the Phillips application discloses a clamp having a pin extending through the clamp member into a cavity, an activating mechanism 28 that biases pin 20 into the clamping cavity in a wedge member 40 that is used to apply a force to the pin. In the Response to Argument section, the Office Action alleges that the spring 28 is positioned about, i.e., near, pin 20.

Applicant has amended independent claim 28 to define that a pin activating mechanism is positioned around a perimeter of the pin. In contrast, the Phillips application discloses a spring loaded pin where the spring is positioned along a side of the pin. The spring is not positioned around the perimeter of the pin. Therefore, the Phillips application does not disclose each and every element of independent claim 28.

For the foregoing reasons, the Phillips application does not anticipate claim 28. Reconsideration and allowance of independent claim 28 are respectfully requested.

Claims 29-31 depend from independent claim 28. Since claim 28 is believed to be in allowable form, claims 29-31 are also in allowable form. Reconsideration and allowance of claims 29-31 are respectfully requested.

The Examiner also provisionally rejected claim 1 on the ground of non-statutory obviousness type double patenting as being unpatentable over co-pending application no. 10/732,491.

Upon receipt of a Notice of Allowance of both the present application and co-pending application no. 10/732,491, Applicant will provide a terminal disclaimer for the present application.

For the foregoing reasons, the present application is believed to be in allowable form. Reconsideration and allowance of the present application are respectfully requested.

Respectfully submitted,

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